IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11085 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO LTD - Petitioner
Versus
MANUBHAI MANILAL PATEL & 2 - Respondent

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Appearance :
MR MAULIK J SHELAT for Petitioner.
RULE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/11/2006

ORAL JUDGMENT

1. The petitioner – original opponent No. 3 – Oriental Insurance Company Limited has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the judgment and award dated 16.07.2002 passed by MACT (Aux.IV), Ahmedabad (Rural) at Gandhinagar in MACP No. 320 of 1989.

2. This Court has issued rule on 15.06.2005. Despite service, nobody appears on behalf of any of the respondents.

3. Mr. Maulik J. Shelat, learned advocate appearing for the petitioner has submitted that the respondent No. 1 – original claimant had filed MACP No. 320 of 1989 before the MACT (Aux.-IV), Ahmedabad (Rural) at Gandhinagar against the present petitioner as well as against the driver and owner of the vehicle being

Truck No. GRG–3103. Along with the said claim petition, the claimant has not produced any policy of petitioner Company for the vehicle in question. The petitioner has also filed its written statement before the Tribunal and in the said written statement, it is categorically mentioned that no such policy and/or particulars are available in the office records of the petitioner Company and hence, unless there is policy issued by the petitioner for vehicle in question, there is no liability of the petitioner to pay any amount.

4. Mr. Shelat has further submitted that without considering the said fact, the tribunal has allowed the said claim petition and awarded Rs.5,000/- with 9% interest from the date of application till payment and the said award was passed against the petitioner. The petitioner was not aware about such judgment as the advocate for the petitioner was elevated as Judge and the said fact was not brought to the notice of the petitioner by him. It is only in February 2005, when the claimant's advocate has approached the petitioner with a copy of the

judgment, the petitioner came to know about the order in the matter. The petitioner, therefore, immediately appointed another advocate in the matter and after receiving all the documents from the Tribunal including the judgment, the petitioner has sought opinion of its legal advisor and the present petition was filed. Since the claimant has failed to submit the policy for the vehicle in question, and unless the policy or any particulars produced by the claimant, there is no liability on the part of the petitioner to pay any amount and the Tribunal has not considered this fact in the matter. The award passed by the Tribunal, therefore, deserves to be quashed and set aside so far as the present petitioner is concerned.

5. After having heard learned advocate appearing for the petitioner and after having gone through the memo of petition, the impugned award passed by the Tribunal as well as the documents attached therewith, the Court is of the view that admittedly, there is no policy on record. Unless and until it is

proved that the vehicle in question was insured by the petitioner Insurance Company, no liability can be fastened on it. It is true that the amount is very small and normally, this Court should not have interfered in such matter. However, looking to the facts and circumstances of the case and since the learned Tribunal has committed an error in fastening the liability of the petitioner in absence of any material document showing that the vehicle in question was insured with the petitioner Company, no liability can be fastened on the petitioner. Keeping this fact in mind, the Court thinks it just and proper to interfere in the matter and while quashing and setting aside the impugned order qua the petitioner, observes that if the claimant – original respondent No. 1 produces the policy showing that the vehicle is insured with the petitioner, the said decree can be executed against the petitioner Company.

6. Subject to the aforesaid clarification, this petition is allowed. Rule is made absolute to the aforesaid

extent without any order as to costs.

[K.A. PUJ, J.]

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